

ORDER NO. 1834

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langlely

Competitive Product Prices
International Business Reply Service
Competitive Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2013-78

ORDER APPROVING ADDITIONAL INTERNATIONAL
BUSINESS REPLY SERVICE 3 NEGOTIATED SERVICE AGREEMENT

(Issued September 13, 2013)

I. INTRODUCTION

On August 29, 2013, the Postal Service filed a Notice, pursuant to 39 C.F.R. § 3015.5, stating that it has entered into an additional International Business Reply Service (IBRS) 3 contract (Agreement). The Postal Service requests that the Agreement be included within the IBRS Competitive Contract 3 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 29, 2013 (Notice). See also Order No. 1824, Notice and Order on New International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 30, 2013.

II. POSTAL SERVICE'S POSITION

The Postal Service identifies the Agreement as the successor to, and with the same customer as, the agreement approved in Docket No. CP2012-54.² The Postal Service intends for the Agreement to take effect September 15, 2013, one day after expiration of the Docket No. CP2012-54 agreement. *Id.* at 3. The Agreement expires one year after its Effective Date or the last day of the month which falls one calendar year from the Effective Date, whichever is later, unless terminated sooner pursuant to other contractual provisions. *Id.* at 4.

The Postal Service asserts that the Agreement fits within the Mail Classification Schedule (MCS) language for IBRS agreements appearing in Attachment A to Governors' Decision No. 08-25. *Id.* at 3-4. The Postal Service states that the referenced Governors' Decision establishes a pricing formula and classification, which ensure that each IBRS agreement meets the criteria of 39 U.S.C. § 3633 and related regulations, and that costs conform to a common description. *Id.* at 4.

The Postal Service asserts that the Agreement is functionally equivalent to the IBRS 3 baseline agreement because it shares similar cost and market characteristics with previously filed IBRS agreements. *Id.* The Postal Service states that the functional terms of the Agreement and the functional terms of the baseline agreement are the same, but acknowledges that other terms may vary. *Id.*

The Postal Service states that prices offered in the Agreement may differ from previous IBRS agreements due to factors such as volume or postage commitments, date of signing, and incorporation of updated costing information. *Id.* at 5. However, the Postal Service states these differences do not alter the Agreement's functional equivalency with the baseline agreement. *Id.* Moreover, the Postal Service states that because the Agreement incorporates the same cost attributes and methodology as the

² See PRC Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011.

IBRS 3 baseline agreement, the Agreement's relevant characteristics and those of the IBRS 3 baseline agreement are similar, if not the same. *Id.*

The Postal Service identifies several differences between the baseline agreement and the Agreement. These include:

- a revision to the last sentence of Paragraph 1 of Article 11 providing an alternative to the term of the Agreement described in the baseline agreement;³
- an additional phrase in Article 15 stating that the Postal Service may be required to file information in connection with the Agreement in other Commission dockets; and
- an additional Article 30 (concerning Intellectual Property, Co-Branding, and Licensing).

Id. at 5-6.

III. COMMENTS

The Public Representative filed comments on September 10, 2013.⁴ No other comments were received. The Public Representative's review of the Agreement and the accompanying financial model leads him to conclude that the Agreement is functionally equivalent to the baseline agreement and that the negotiated prices in the Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633. PR Comments at 1-2. With respect to functional equivalence, the Public Representative also reviews the differences the Postal Service identifies between the baseline agreement and the Agreement, agrees with the Postal Service's characterization of the differences as minor, and concludes that the

³ The revised provision reads: "The Agreement shall remain in effect for one calendar year from the Effective Date or the last day of the month which falls one calendar year from the Effective Date, whichever is later, unless terminated sooner pursuant to Article 12 or Article 13." *Id.*

⁴ Public Representative Comments on Postal Service Notice of Filing an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, September 10, 2013 (PR Comments).

Agreement is functionally equivalent to the baseline agreement. *Id.* at 3. With respect to 39 U.S.C. § 3633(a), the Public Representative concludes, based on a review of the financial model, that the negotiated prices in the Agreement should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a). *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to determine whether the Agreement (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. The Commission's assessment of the functional equivalence of the Agreement leads it to conclude that the Agreement shares similar cost and market characteristics to the baseline agreement. The revision to Article 11 providing for an alternative expiration date is similar to provisions the Postal Service has proposed and the Commission has approved in other recent dockets. The other two revisions are also similar to provisions the Commission has approved in other dockets. These minor differences do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement.

Cost considerations. The Commission reviews competitive products to ensure they meet the applicable requirements of 39 U.S.C. § 3633 and 39 C.F.R. §§ 3015.5 and 3015.7. The Commission has reviewed the financial analyses underlying the Agreement and the Public Representative's Comments. Based on the information provided, the Commission finds that the Agreement should cover its attributable costs (39 U.S.C. § 3633(a)(2)); not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); and have a positive effect on the contribution of competitive products to institutional costs (§ 3633(a)(3)). Thus, a preliminary review of the proposed Agreement indicates it is consistent with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633.

Other considerations. The Commission shall notify the Commission if the Agreement terminates earlier than described in Article 15. In addition, the Agreement, like previous IBRS competitive agreements, includes clauses addressing cost increases and contingent pricing which allow the Postal Service flexibility to change rates without entering into a new agreement. The Commission addressed the implications of contingency pricing clauses in Order No. 178 (in Docket No. CP2009-20) and concluded that the Postal Service must file notice of rate changes occurring under such clauses pursuant to 39 C.F.R. § 3015.5 and provide a minimum of 15 days' notice.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-78 is included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product.
2. The Postal Service shall notify the Commission if the Agreement terminates earlier than described in Article 15.
3. The Postal Service shall file any price modifications based on cost increases or contingency price provisions in the Agreement with the Commission as discussed in the body of this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary